

MINUTES
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
Utah Department of Environmental Quality
168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah

November 10, 2005

Board Members Present: Craig Anderson, (Chair), John Newman (Vice-Chair), Carlton Christensen, Kory Coleman, William Doucette, Craig Forster, Gary Mossor, Kevin Murray, Dianne Nielson, Dennis Riding.

Staff Members Present: Scott Anderson, Marty Gray, Rusty Lundberg, Dale Marx, Patrick Sheehan, Don Verbica, John Waldrup.

Others Present: Dan Shrum, Elizabeth Lowes, Gene Curtis, Kris Snow, Clint Warby, Rick Rathbun, Greg Jones, Mark Tyler.

I. The meeting was called to order at 1:06 p.m.
Scott Bruce and David Cunningham were excused from the meeting. Acknowledgement was given to Carlton Christensen for his re-election as Council Member (Salt Lake City Council).

II. Approval of minutes for the October 13, 2005 Board meeting (Board Action Item)

It was motioned by Bill Doucette and seconded by Craig Forster and unanimously carried that the October 13, 2005, Board meeting minutes be approved.

III. Underground Storage Tanks Update

Sitting in for Brad Johnson, Dale Marx, the Underground Storage Tank (UST) Branch Manager for the Division of Environmental Response and Remediation (DERR), explained that in the last Board meeting, Michael Brehm questioned if the Actuarial Report for the Petroleum Storage Tank (PST) Fund included labor versus material costs. At that time, it was unknown for sure if these costs were included. After researching this question in more depth, Mr. Marx explained that the report does not include labor versus material costs as the report is not broken out into categories. However, if the Board members are interested in this information and feel that it is of value, the DERR could go through all of their individual files to obtain these statistics.

Mr. Marx then informed the Board members that a Utah UST Advisory Task Force (UST Task Force) meeting is scheduled for November 15, 2005, in which the privatization of the PST Fund will be discussed. As such, it is anticipated that Senator Brent Goodfellow, the Vice-Chair of the Utah Privatization Policy Board will be in attendance. Other topics for the meeting will include a discussion regarding the "draft" legislation, which was prepared by the DERR and presented to the Natural Resources/Agriculture/Environment Interim Committee (Interim Committee), to require owners/operators of tanks to have all or none of them on the PST Fund. Recently, one of the associations involved with the UST Task Force came forward with a recommendation to have the program more risk-based instead of requiring owners/operators to have all or none of their tanks on the PST Fund. This topic was to be discussed in the Interim Committee meeting held on November 9, 2005, but due to time constraints, was not conferred upon. The DERR will continue to work with stakeholders in moving forward regarding this issue, and will keep the Board members up to date on new developments.

IV. Underground Storage Tank Rule Changes (Informational Item)

Mr. Marx continued on by stating that the DERR had the intention of coming before the Board to seek approval to go to a public comment period for the proposed changes to UST rule R311. However, due to the fact that the Environmental Protection Agency recently changed the cleanup levels for Toluene, some concerns have been expressed by the UST Task Force members. As such, approval for the proposed rule changes will be postponed until future Board meetings.

Dennis Riding inquired if this adjustment in the Toluene screening level will also change the proposed rule changes. Mr. Marx stated that since cleanup levels will be included in the rules, this adjustment will affect the rule changes.

V. Used Oil Section

Proposed Stipulation and Consent Order between the Board and Basin Petroleum Inc. (Informational Item Only)

Patrick Sheehan informed the Board of Proposed Stipulation and Consent Order (SCO) No. 0508021 between the Board and Basin Petroleum Inc. Basin Petroleum, Inc. is a permitted used oil transporter and used oil transfer facility located in Vernal, Utah. Basin Petroleum sells and delivers refined petroleum products to various sites involved with natural gas and/or crude exploration. The company also collects used oil from these operations and consolidates it in a 2,900 gallon tank located at their Vernal facility where it is later transported off site by a permitted used oil transporter.

On September 23, 2004, a Warning Letter was issued to Basin Petroleum for non-compliance with certain applicable regulatory standards. Basin Petroleum responded satisfactorily to most of the issues outlined in the Warning Letter, but did not satisfactorily address the pollution liability and closure plan/reclamation surety issues. A Notice of Violation was issued on May 25, 2005. The NOV was issued because Basin Petroleum failed to properly demonstrate sufficient financial responsibility to cover environmental pollution liability and failed to modify and update its closure plan and associated reclamation surety mechanism for its used oil transfer facility.

To resolve the NOV, a proposed SCO has been negotiated with Basin Petroleum. Under the terms of the proposed SCO, Basin Petroleum will pay \$2,442.00 within 90 days of the effective date of the proposed SCO. A 30-day public comment period on the proposed SCO is scheduled from October 25, 2005 to November 23, 2005.

Mr. Sheehan clarified that Basin Petroleum did have a closure plan but failed to modify and update it. Upgrades at the facility have occurred and Basin Petroleum is required to submit a modified closure plan to accurately reflect the current facility location and operations. Mr. Sheehan stated that Basin Petroleum has been in business since 1999. Carlton Christensen asked if operations need to cease until the liability insurance issues are resolved. Mr. Sheehan stated that Basin Petroleum's operations were not required to cease operations. Mr. Sheehan clarified that Basin Petroleum submitted a certificate of insurance demonstrating general liability insurance coverage for its facility. However, Basin Petroleum has not submitted documentation demonstrating sufficient financial responsibility to cover costs associated with environmental pollution liability.

VI. Proposed Rule Change

Proposed Changes to the Utah Hazardous Waste Rules, R315-102 (penalty policy) to reflect recent changes to the Utah Solid and Hazardous Waste Act made by the Utah State Legislature (Board Action Item)

Don Verbica informed the Board that the Division is proposing changes to R315-102 of the Utah Hazardous Waste Rules (penalty policy) to reflect recent changes to the Utah Solid and Hazardous Waste Act made by the Utah State Legislature. During the 2005 legislative session, the Legislature passed Senate Bill 24. Among other things, Senate Bill 24 raised the maximum daily penalties for violations of the Solid and Hazardous Waste Act from \$10, 000 to \$13,000 per day of violation. This statutory change necessitates a change in the Board's penalty policy because the penalty ranges associated with the various components of the policy are tied directly to the amount of penalty in the statute. The change does not affect the Used Oil Program.

The proposed rule change requires the Board's action to allow the formal rulemaking process to begin and to start the 30-day public comment period.

Bill Doucette asked when the last time the Used Oil penalties were adjusted and have they always been the same as the Solid and Hazardous Waste penalties. Don Verbica stated that when the Used Oil Act was first passed, the penalties were the same as the Solid and Hazardous Waste penalties. Rusty Lundberg clarified that the initial legislation was passed approximately 10-12 years ago, but was not sure if a section of the original legislation included penalties or whether it was added later. Mr. Doucette asked if there was any particular reason why the Used Oil penalties have not been adjusted. Don Verbica stated that the Legislature had a Task Force that focused on the Hazardous Waste portion and therefore Senate Bill 24 focused on Solid and Hazardous Waste only.

It was motioned by John Newman and seconded by Bill Doucette and unanimously carried that the proposed rule changes to R315-102 begin the formal rulemaking process and start the thirty-day public comment period.

VII. Chemical Demilitarization TOCDF Update

Marty Gray stated that TOCDF is continuing with its change-over operations to prepare for the mustard campaign. TOCDF is preparing their plans for the mustard processing by developing permit modifications. TOCDF is currently initiating enhanced public participation by putting together poster sessions that show the processes that will be used in the mustard campaign. The poster sessions are being displayed to the public and during the poster sessions the public is invited to comment. Based upon the comments received, TOCDF could modify its plans. The public comment period will end on November 22, 2005.

DSHW staff members have provided training to the entire CAMDS and Area 10 Depot staff. The training was based on problems that were noted on recent inspections. In that training, the following issues were addressed: the role of DSHW within DEQ, the Board and its responsibilities, hazardous waste rules, permitting issues, and compliance and enforcement information. Over 200 employees received the training.

At CAMDS, a vial of dilute agent used for testing monitoring stations was recently discovered missing and was reported to the media. This dilute agent solution is used as a standard by monitoring technicians to challenge the automatic continuous air monitoring systems (ACAMS). CAMDS has

some chain-of-custody procedures for the vials that they are required to maintain. CAMDS has gone through a re-organization and has hired an auditor. The auditor discovered the missing vial. It is unclear at this time if the vial was stolen or if it was a paperwork tracking problem. Carlton Christensen asked if direct contact with the dilute agent would cause any problems. Mr. Gray stated he does not believe that someone would exhibit any symptoms resulting from exposure to the solution since it is such a dilute concentration. Mr. Gray clarified that at the different monitoring stations, the technicians inject this solution into the station and an alarm should go off. If the station does not alarm, the technicians have to correct the problem.

XI. Other Business

A. Legislative Update

Rusty Lundberg stated that at previous Board meetings, Division personnel have kept the Board informed of legislative issues. At this point, there are no new legislative issues to report. One issue previously presented to the Board was the legislation on the Reauthorization of the Lead Acid Battery Disposal Statute. This bill will sunset next July. Therefore, it will be included in the overall sunset reauthorization bill. This bill did receive a favorable unanimous recommendation by the Interim Committee early this year and it is anticipated that this bill will move forward without any concerns.

B. Request for Agency Action

Appeal Regarding NOV issued to Wasatch Integrated Waste Mgt. District

Rusty Lundberg stated the Division recently received an appeal of a Notice of Violation (NOV) issued to Wasatch Integrated Waste Mgt. District (Wasatch). Wasatch operates both an incinerator and a landfill in Davis County. The NOV was issued to Wasatch for receiving and incinerating a load of color computer monitors from State Surplus. The generator of the monitors (State Surplus) had declared these monitors to be a characteristic hazardous waste. Wasatch is not permitted to manage hazardous waste. After receiving the NOV, Wasatch submitted a request for agency action to appeal the issuance of the NOV. The Division staff is now in discussions with Wasatch and anticipates that this issue can be resolved. However, because the request received by the Division was a formal request, the Division felt it was appropriate to apprise the Board of this matter.

John Newman asked if State Surplus was also being issued an NOV. Mr. Lundberg stated that a NOV was also issued to State Surplus.

Rick Rathbun was requested to provide an update on the administrative process following the request for agency action. Mr. Rathbun stated that if a party receiving a NOV wishes to challenge the NOV, the rules require them to file an appeal with the Board within 30 days. At that point, the request for action is brought before the Board and the matter is handled according to the Utah Administrative Procedures Act. Mr. Rathbun also stated that some parties prefer to reserve their right to pursue an appeal of an enforcement action by submitting a letter to that effect, but try to work with the staff to resolve the matter without going through a formal process.

Dianne Nielson asked if State Surplus had filed a request for agency action. Mr. Lundberg indicated that a letter was received from State Surplus stating they will not appeal the issuance of the NOV and Division staff will begin negotiations with State Surplus on an appropriate settlement. Ms. Nielson asked if Wasatch had actually appealed the NOV. Mr. Lundberg stated that Wasatch had filed an appeal; however, in talking with the attorney that submitted the appeal, Wasatch's preference is to discuss and negotiate the NOV, while reserving their right to appeal the issuance of the NOV.

Carlton Christensen asked about the timeframe for the discussions with Wasatch. Mr. Lundberg stated that the timelines for discussions that are established by statute will be followed.

C. Board field trip on November 15, 2005

Due to scheduling conflicts, the Board field trip scheduled for November 15, 2005 was cancelled. Optional dates for the Board to tour the Envirocare Facility and the two Clean Harbors Facilities will be discussed at an upcoming Board meeting.

D. December Board Meeting Cancelled

Since there were no pressing issues that required the Board to meet in December, the December meeting was cancelled. The next Board meeting will be held on January 12, 2006 at 1:00 p.m., in the DEQ Building #2, Conference Room 101.